

COMMONWEALTH OF KENTUCKY  
KENTUCKY SUPREME COURT  
FILE NO. 2015-SC-000570  
(COURT OF APPEALS CASE NUMBER 2015-CA-000886-DD)

DENNIS CHAMPION

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HON. KIMBERLY BUNNELL, JUDGE  
15-XX-000006; 14-M-20356

COMMONWEALTH OF KENTUCKY

APPELLEE

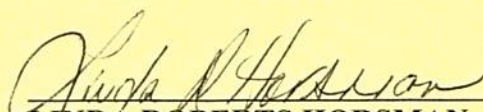
REPLY BRIEF FOR APPELLANT, DENNIS CHAMPION

Submitted by:

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The undersigned does certify that copies of this Reply Brief were mailed, first class postage prepaid, to the Honorable Kimberly Bunnell, Judge, Fayette Circuit Court, Robert F. Stephens Courthouse, 120 N. Limestone, Suite 521, Lexington Kentucky 40507; the Honorable Joseph T. Bouvier, Judge, Fayette District Court, 150 North Limestone, Lexington, KY 40507; the Hon. William E. Sharp, ACLU of Kentucky, 315 Guthrie Street, Suite 300, Louisville, Kentucky 40202; the Hon. Jason Rothrock, Assistant County Attorney, 201 E. Main Street, Suite 600, Lexington, KY 40507; the Hon. Carmen Ross, Assistant Public Advocate, 163 West Short Street, Suite 300, Lexington, KY 40507; and served by messenger mail to Hon. Andy Beshear, Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Frankfort, Kentucky 40601 on August 29, 2016. The record was not checked out in preparation of this Reply Brief for Appellant.

  
LINDA ROBERTS HORSMAN

### **PURPOSE OF THE REPLY BRIEF**

The purpose of this reply brief is to address only those matters presented in the Appellee's brief that Appellant believes deserve further comment or citation of additional authorities beyond that presented in the previously filed Brief for Appellant. The failure to address a particular issue should not be taken as a reflection that Appellant believes the issue has no merit or less merit than issues that have been addressed in this reply brief.

### **STATEMENT CONCERNING ORAL ARGUMENT**

The Appellant does desire oral argument in this case as it presents issues of complexity such that this Court might be assisted by oral argument.

### **STATEMENT CONCERNING CITATIONS TO THE RECORD**

In the Appellee's Brief, the government failed to comply with CR 76.12(4)(c)(iv) in that there are no citations to the record on appeal contained in the Brief. However, the government cited so few items that the failure to contain proper citation forms is *de minimis* and should not affect this Court's ability to discern references to various events, which are not so numerous in this matter and can otherwise be identified by the Appellant's complying Brief. The Appellant has chosen not to ask this Court to strike the Appellee's Brief as non-conforming and to decide the appeal on the merits.



**I. THE GENERAL ASSEMBLY ALONE MAY CRIMINALIZE BEHAVIOR.**

The government argues that the power grab by the Lexington-Fayette Urban County Government was authorized by two statutes which can be read in agreement: KRS 83A.065 and KRS 500.020. (Appellee Brief at 2). While KRS 83A.065 grants power to cities to nominate the failure to follow an ordinance either a misdemeanor or a violation, KRS 500.020 restricts the criminalizing of behavior to only actions of the General Assembly; “no act or omission shall constitute a criminal offense unless designated a crime or violation under this code or another statute of this state.” Mr. Champion disagrees and insists that the two statutes can only be read to restrict cities and metro governments to punishing behavior only when a statute already forbids such behavior.

There is no need to resort to the rule of statutory construction that the more specific statute shall control as that rule is only implemented when the two statutes *cannot* be read in concert. Though it may be unfortunate for the Appellee, the two statutes most definitely *can* be read in concert, with the result necessitating a finding that the ordinance at hand must fail.

Rather, one must begin first by recognizing that the first rule of statutory construction was codified by the Kentucky General Assembly in KRS 446.080:

(1) All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature, and

the rule that statutes in derogation of the common law are to be strictly construed shall not apply to the statutes of this state.

The clear intent of the General Assembly in passing both KRS 83A.065 and KRS 500.020 was to reserve for itself only the promulgation of legislation outlining criminal conduct. *See Beach v. Commonwealth*, 927 S.W.2d 826, 828 (Ky. 1996), “A fundamental rule of statutory construction is to determine the intent of the legislature, considering the evil the law was intended to remedy.”

It is of little comfort that one, charged improperly with violating an illegally-passed ordinance, has due process rights. Better one not be pestered with illegal prosecutions at all.

## **II. THE ORDINANCE DOES NOT SURVIVE STRICT SCRUTINY.**

The stated purpose of the ordinance is in “regulating interaction between people on foot and people driving vehicles.” (Appellee’s Brief at 5). However, the ordinance is not sufficiently narrowly-tailored to accomplish only that goal. It rather punishes speech which has nothing to do with the interaction between pedestrians and vehicles. This failing is pointed out in Appellee’s Brief by arguing that street performers are not prohibited by the ordinance; a performance by a mime or busking by a retinue of musicians would be much more likely to distract drivers than a humble sign requesting financial assistance from a pedestrian down on his luck. *Id.*

The conduct which the government now argues it seeks to prevent with the ordinance—“stepping into the street to get money from the motorist and then walking in the street to the next car in line to get money from the next motorist, and so on”—is not the conduct prevented by the ordinance. (Appellee’s Brief at 6). If the government sought only to prevent the approach of persons to cars in the roadway, the ordinance was insufficiently drafted and not sufficiently narrowly tailored. Mr. Champion does not concede that such an ordinance would survive review, but such ordinance is certainly not what is being defended by the government in the matter at hand.

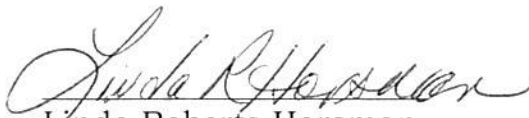
It is disingenuous for the government to now pronounce that the purpose of the ordinance is to protect the pedestrian when Mr. Champion was cited not for interference with the traffic or endangering himself, but simply for “soliciting/begging for alms” when he “was observed ... soliciting/begging for alms. Suspect had a homemade sign stating/begging for alms.” There was no indication that he was impeding traffic in any way and the focus of the charge was his speech.

The ordinance was not sufficiently narrowly-tailored to survive strict scrutiny and must be struck down.

### **CONCLUSION**

For all of the foregoing reasons, Mr. Champion prays this Court will vacate his conviction and strike down the ordinance as an unconstitutional restriction of free speech.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda Roberts Horsman".

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